

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ROBERTO BLANDINO,

Plaintiff,

v.

IMMIGRATION AND CUSTOMS  
ENFORCEMENT OFFICERS,

Defendants.

No. C 10-4529 JSW (PR)

**ORDER OF DISMISSAL WITH  
LEAVE TO AMEND**

(Docket No. 3)

**INTRODUCTION**

Plaintiff, an inmate in the Yuba County Jail, has filed a pro se civil rights complaint against officers of the Department of Immigration and Customs Enforcement (“ICE”) pursuant to *Bivens v. Six Unknown Named Agents*, 403 U.S. 388, 392-97 (1971) (implying private right of action for allegations of constitutional violations made against federal employees or their agents). Plaintiff’s motion to proceed in forma pauperis is granted in a separate order. In this order, the Court reviews Plaintiff’s complaint pursuant to 28 U.S.C. § 1915A and dismisses it with leave to amend within thirty days, and denies Plaintiff’s motion for appointment of counsel (docket number 3).

**DISCUSSION**

**I      Standard of Review**

Federal courts must engage in a preliminary screening of cases in which prisoners

1 seek redress from a governmental entity or officer or employee of a governmental entity.  
 2 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the  
 3 complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or  
 4 fails to state a claim upon which relief may be granted," or "seeks monetary relief from a  
 5 defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be  
 6 liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
 7 1990).

8 Federal Rule of Civil Procedure 8(a)(2) requires only "a short and plain statement  
 9 of the claim showing that the pleader is entitled to relief." "Specific facts are not  
 10 necessary; the statement need only "give the defendant fair notice of what the . . . claim  
 11 is and the grounds upon which it rests." *Erickson v. Pardus*, 127 S. Ct. 2197, 2200  
 12 (2007) (citations omitted). Although in order to state a claim a complaint "does not need  
 13 detailed factual allegations, . . . a plaintiff's obligation to provide the 'grounds of his  
 14 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic  
 15 recitation of the elements of a cause of action will not do. . . . Factual allegations must  
 16 be enough to raise a right to relief above the speculative level." *Bell Atlantic Corp. v.*  
 17 *Twombly*, 127 S. Ct. 1955, 1964-65 (2007) (citations omitted). A complaint must proffer  
 18 "enough facts to state a claim for relief that is plausible on its face." *Id.* at 1974. Pro se  
 19 pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696,  
 20 699 (9th Cir. 1990).

## 21 II. Legal Claims

22 Plaintiff claims that ICE officers violated his constitutional rights to due process,  
 23 to equal protection, and to be free from unlawful searches and seizures. However,  
 24 Plaintiff does not name or otherwise identify any Defendant, except to say they are ICE  
 25 officers. Without sufficient identifying information, at a minimum their names and  
 26 locations, Defendants cannot be served with process. Plaintiff must promptly take steps  
 27

1 to discover the names of the unnamed defendants and provide that information to the  
2 Court in an amended complaint. The burden remains on the Plaintiff and the Court will  
3 not undertake to investigate the names and identities of unnamed defendants.

4 Plaintiff will be provided with thirty days in which to file an amended complaint  
5 to correct this deficiency.

## 6 CONCLUSION

7 For the foregoing reasons and for good cause shown,

8 1. The complaint is DISMISSED WITH LEAVE TO AMEND, as indicated  
9 above. Plaintiff shall file an amended complaint within *thirty (30) days from the date of*  
10 *this order* in which he provides sufficient information to identify and locate the  
11 Defendants, including at a minimum their names and place of employment. The  
12 amended complaint must include the caption and civil case number used in this order and  
13 the words "COURT ORDERED AMENDED COMPLAINT" on the first page. Failure  
14 to amend within the designated time will result in dismissal of the complaint.

15 2. Plaintiff is advised that an amended complaint supercedes the original  
16 complaint. "[A] plaintiff waives all causes of action alleged in the original complaint  
17 which are not alleged in the amended complaint." *London v. Coopers & Lybrand*, 644  
18 F.2d 811, 814 (9th Cir. 1981). Also, defendants not named in an amended complaint are  
19 no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.), *cert.*  
20 *denied*, 506 U.S. 915 (1992).

21 3. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the  
22 Court informed of any change of address and must comply with the Court's orders in a  
23 timely fashion. Failure to do so may result in the dismissal of this action under Federal  
24 Rule of Civil Procedure 41(b).


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1           4. Plaintiff's motion for appointment of counsel is DENIED for want of  
2 exceptional circumstances (docket number 3).

3           IT IS SO ORDERED.

4           DATED: November 30, 2010

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7           JEFFREY S. WHITE  
8           United States District Judge  
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UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

ROBERTO X. BLANDINO,  
Plaintiff,

Case Number: CV10-04529 JSW

**CERTIFICATE OF SERVICE**

v.

IMMIGRATION & CUSTOMS et al,  
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on November 30, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Roberto X. Blandino  
A077223173  
ICE Detention Facility  
215 5<sup>th</sup> Street  
Marysville, CA 95901-0029

Dated: November 30, 2010



Richard W. Wieking, Clerk  
By: Jennifer Ottolini, Deputy Clerk